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*Counsel for Plaintiff*  
YUNGHI KIM

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

YUNGHI KIM,

Plaintiff,

v.

AFROPUNK LLC d/b/a afropunk.com;  
and DOES 1-10, inclusive

Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

**DEMAND FOR JURY TRIAL**

Plaintiff, Yunghi Kim, for her Complaint against Defendant, Afropunk LLC d/b/a afropunk.com, alleges as follows:

**INTRODUCTION**

1. Plaintiff Yunghi Kim by Plaintiff's attorneys brings this action against Afropunk LLC d/b/a afropunk.com (hereinafter "Defendant"), with regard to the unlawful use of a copyrighted image.

2. For the purposes of this Complaint, unless otherwise indicated, “Defendant” includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogates, representatives and insurers of Defendants named in this caption.

3. Plaintiff is unaware of the true names and capacities of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, sues such Defendants under such fictitious names. Plaintiff is informed and believes and on that basis alleges that such fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff’s damages as herein alleged were proximately caused by the conduct of said Defendants. Plaintiff will seek to amend the complaint when the names and capacities of such fictitiously named Defendants are ascertained. As alleged herein, “Defendant” shall mean all named Defendants and all fictitiously named Defendants.

### **JURISDICTION AND VENUE**

4. This is a civil action seeking damages and injunction relief for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101, whereby the Defendant violated Plaintiff’s exclusive rights as copyright owner pursuant to 17 U.S.C. § 106.

5. This Court has subject matter jurisdiction over Plaintiff’s claims

for copyright infringement pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

6. This Court has personal jurisdiction over Defendant because Defendant conducts business within the State of New York, Defendant's acts of infringement complained of herein occurred in the State of New York, Defendant is a limited liability company organized under the laws of the State of New York, and Defendant caused injury to Plaintiff within the State of New York.

7. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiff's claim occurred in this judicial district. Alternatively, venue is also proper pursuant to 28 U.S.C. § 1400(b) because the Defendant resides and has a regular and established place of business in this judicial district.

### **PARTIES**

8. Plaintiff Yunghi Kim ("Kim" or "Plaintiff") resides in the City of Brooklyn in the State of New York and is a professional photographer by trade.

9. Kim is the sole author and exclusive rights holder to an original image of the protesters mourning the death of Freddie Gray in West Baltimore (the "Image") pursuant to 17 U.S.C. §§ 101 and 106.

10. Kim is informed and believes, and thereon alleges, that Defendant is a limited liability company duly organized and existing under the laws of the State of New York, with a place of business at 350 Grand Ave, Brooklyn, New York, 11238. On information and belief, Defendant owns and operates the commercial website <http://www.afropunk.com/>.

### **FACTUAL ALLEGATIONS**

11. Kim is a professional photographer and world-renowned photojournalist. A library of Kim's work, including the Image, is accessible through Plaintiff's website <http://www.yunghikim.com/>.

12. Kim's work has been featured in dozens of major media outlets including The Boston Globe, Time, Newsweek, Business Week, U.S. News and World Report, LIFE, Forbes, Fortune, Sports Illustrated, People Magazine, Vogue, New York Times, and The New Yorker.

13. Over her 30-year career, Kim's photography has received widespread critical acclaim including being named a 1993 Pulitzer Prize finalist for her photographs of the famine, war and American relief efforts in Somalia while on assignment for The Boston Globe.

14. In addition to her prior accolades, Kim's Image was awarded first place in the General News category at the Seventy-Third Annual Pictures of the Year International Competition in 2016. See <https://nyti.ms/1RDot8D>.



15. Kim is the sole author of the Image. A true and correct copy of Kim's original Image is attached hereto as Exhibit A.

16. By virtue of her sole authorship, Kim has complete ownership rights and copyrights to the Image.

17. Kim registered the Image with the United States Copyright Office under registration number V Au 1-209-279.

18. Kim licensed her original Image to Vanity Fair. On or about July 2015, Vanity Fair ran an article on its website entitled, *The Other Cultural Force Behind Police Brutality* (the "Vanity Fair Article"). See <https://www.vanityfair.com/culture/2015/06/police-deaths-baltimore-ferguson-james-wolcott>.

19. The Vanity Fair Article featured Kim's original Image as the lead photograph with a caption stating, "Men mourn the death of Freddie Gray in West Baltimore, April 28, 2015. © Yunghi Kim/Contact Press Images." A true and correct copy of the Article is attached hereto as Exhibit B.

20. Plaintiff is informed and believes that on or about September 21, 2016, Defendant ran an article on its website entitled *OP-ED: The Emotional Roller Coaster We Face As The Murders Continue To Rise #TERENCECRUTCHER* (the "AFROPUNK Article") which featured Kim's Image with the photo credit incorrectly stating "Photo by JAMES WOLCOTT

via Vanity Fair”. A true and correct copy of Defendant’s infringing use of Kim’s Image is attached hereto as Exhibit C.

21. Additionally, Defendant created a Facebook post using Kim’s Image with a link to the AFROPUNK Article on its verified Facebook page. As of the date of the filing of this Complaint, Defendant’s post is still publically displayed on Defendant’s Facebook page at <https://www.facebook.com/AFROPUNK/posts/10153894757601623>, and has approximately 1,100 likes and 524 shares. A true and correct copy of Defendant’s Facebook post is attached hereto as Exhibit D.

22. Kim did not consent to authorize, permit, allow in any manner the use of the Image by Defendant.

23. Kim is informed and believes that Defendant used Kim’s copyrighted works without her permission and that it published, communicated, benefited through, posted, publicized and otherwise held out to the public for commercial benefit, the original and unique Image of Kim without Kim’s consent or authority, and acquired monetary gain and market benefit as a result.

24. Defendant used the Image to promote the Defendant’s website despite its knowledge that the Image is subject to copyright.

25. Defendant did not request permission to use Kim’s Image nor did

Kim consent to the use of her Image for Defendant's commercial gain.

26. On information and belief, Defendant's infringing use of Kim's image is willful.

### **FIRST CAUSE OF ACTION**

### **COPYRIGHT INFRINGEMENT**

#### **Title 17 of the United States Code**

27. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

28. Plaintiff did not consent to, authorize, permit, or allow in any manner the said use of Plaintiff's unique and original Image.

29. Plaintiff is informed and believes and thereon alleges that the Defendant willfully infringed upon Plaintiff's copyrighted Image in violation of Title 17 of the U.S. Code, in that it used, published, communicated, posted, publicized, and otherwise held out to the public for commercial benefit, the original and unique Image of the Plaintiff without Plaintiff's consent or authority, and acquired monetary gain and market benefit as a result.

30. As a result of Defendant's violation of Title 17 of the U.S. Code, Plaintiff is entitled to any actual damages pursuant to 17 U.S.C. §504(b).

31. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to any actual damages pursuant to 17 U.S.C. §504(b), or

statutory damages in an amount up to \$150,000.00 pursuant to 17 U.S.C. § 504(c).

32. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C § 505 from Defendant.

33. Plaintiff is also entitled to injunctive relief to prevent or restrain infringement of her copyright pursuant to 17 U.S.C. § 502.

## **SECOND CAUSE OF ACTION**

### **FALSIFICATION, REMOVAL AND ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION**

#### **17 U.S.C. § 1202**

34. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

35. On information and belief, Defendants knew that Plaintiff created the Image because, *inter alia*, the source of the Image that Defendants used to produce the infringing web page specifically attributed the Image to Plaintiff.

36. Defendants intentionally falsified copyright management information related to the Image with the intent to induce, enable, facilitate, or conceal an infringement of Plaintiff's rights under the Copyright Act.

Specifically, on Defendant's website, Defendants has supplied inaccurate copyright management information that falsely identifies another artist, or another person or entity, that has no copyright ownership interest as the owner of copyright in the Image.

37. Defendant's conduct constitutes a violation of 17 U.S.C. § 1202(a), and 1202(b).

38. Defendant's falsification, removal and/or alteration of that copyright management information was done without Plaintiff's knowledge or authorization.

39. Defendant's falsification of said copyright management information was done by Defendant intentionally, knowingly, and with the intent to induce, enable, facilitate, or conceal Defendant's infringement of Plaintiff's copyright in the Image. Defendant also knew, or had reason to know, that such removal and/or alteration of copyright management information would induce, enable, facilitate, or conceal Defendant's infringement of Plaintiff's copyright in the Image.

40. Plaintiff has sustained significant injury and monetary damages as a result of Defendant's wrongful acts as hereinabove alleged, and as a result of being involuntarily associated with Defendant in an amount to be proven.

41. In the alternative, Plaintiff may elect to recover statutory damages

pursuant to 17 U.S.C. § 1203(c)(3) in a sum of not more than \$25,000 from each Defendant for each violation of 17 U.S.C. § 1202.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

- For statutory damages against Defendant in an amount up to \$150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c);
- For general and special damages against Defendant according to proof together with interest thereon at the maximum legal rate;
- For costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
- For an injunction preventing Defendant from further infringement of all copyrighted works of the Plaintiff pursuant to 17 U.S.C. § 502; and
- For any other relief the Court deems just and proper.

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Dated: September 12, 2017

Respectfully submitted,

/s/Rayminh L. Ngo, Esq.,  
SDNY #RN4834  
HIGBEE & ASSOCIATES (Of  
Counsel)  
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*Counsel for Plaintiff*

**DEMAND FOR JURY TRIAL**

Plaintiff, Yunghi Kim, hereby demands a trial by jury in the above matter.

Dated: September 12, 2017

Respectfully submitted,

/s/Rayminh L. Ngo, Esq.,  
SDNY #RN4834  
HIGBEE & ASSOCIATES (Of  
Counsel)  
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*Counsel for Plaintiff*



# EXHIBIT A



# EXHIBIT B



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FROM THE MAGAZINE

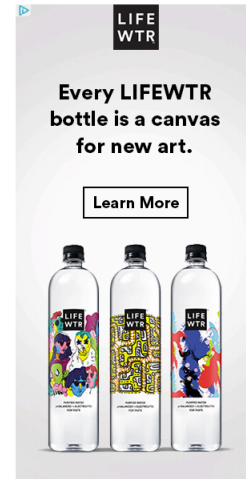
## The Other Cultural Forces Behind Police Brutality

Racism isn't the only thing behind the increasing slaughter of black men (and boys) by the police. There's also a long-ingrained culture that glorifies law enforcement and now, thanks to the War on Terror, a domestic glut of Pentagon hardware.

BY JAMES WOLCOTT | JULY 2015



Men mourn the death of Freddie Gray in West Baltimore, April 28, 2015. © Yunghi Kim/Contact Press Images.



Even for a radical magazine in a radical decade with Molotov cocktails on its mind, the cover of the July 1969 issue of *Ramparts* was, shall we say, arresting. Breaking the fourth wall in a big way, it cried Halt! with a helmeted, face-shadowed policeman pointing a revolver square at the reader's head, and offered the following bounty: "\$10,000 for Information Leading to the Arrest and Conviction of any Cop who has Murdered a Black Man." Many of *Ramparts'* insurrectionist covers have dated into countercultural relics. Not this one. Here we are, 46 years later, deep in the second term of the country's first African-American president, and, for all of the country's racial progress, the killings of black men (and boys) by police officers haven't dwindled into a few grievous, rogue-cop incidents; they've appeared to accelerate and hemorrhage into a Rorschach blot of blood pools. Were any magazine to tout a similar wanted poster today the inundation would immobilize its in-box. *Ramparts* felt compelled to step up to the plate with its graphic proposal because, back in those analog days of *Mad Men* yore, documentation of police brutality was sketchy, sporadic, heavily dependent on eyewitness accounts. Digital technology has democratized eyewitnesshood, made it less subject to the Rashomon effect. All it takes to record law officers in the act of firing on an unarmed suspect or executing a beatdown is a bystander with a cell-phone camera or a surveillance cam in just the right spot. Yet the vortex impact of viral footage of killer cops—the outrage, protest marches, criminal charges—doesn't seem to have inhibited lethal-forcers. Each week a new victim seems to go up on the scoreboard.



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Black Lives Matter was the protest message adopted after the acquittal in 2013 of George Zimmerman in the shooting of the unarmed 17-year-old Trayvon Martin. It swelled into a movement as open season seemed to be declared on black males and tragedies multiplied. Black lives matter in America, but white lives rule. Self-styled, homegrown, beef-jerky *Red Dawn* “Wolverines!” Open Carry showboats can preen about with AR-15s strapped to their backs without meeting kingdom come, and a psycho-killer such as James Eagan Holmes can be apprehended in one piece after conducting a massacre in an Aurora, Colorado, movie theater that left 12 dead and 70 wounded, while a black father of four, Romain Brisbon, can be shot for holding a vial of pills mistaken for a weapon, another can be shot for handling a pellet gun at Walmart (John Crawford, aged 22), and a 12-year-old black child can have his future erased for playing with a BB gun, shot by an officer who may not have been aware the boy was holding a toy gun. (The victim, Tamir Rice, died the next day at the hospital and six months after his death had still not been buried, denied even that dignity. His family finally decided to have him cremated.)

The latitude of response allowable to a black suspect is razor-thin to nonexistent. Resist, like Eric Garner, surrounded by a scrum of cops for the quality-of-life offense of allegedly selling individual cigarettes, or “loosies,” and you can find yourself in a choke hold that leaves you gasping, “I can’t breathe,” until the last breath goes. Flee and you may get shot in the back, like Walter Scott, felled by a South Carolina officer whose fairy-tale account of the incident collapsed when video showed him performing his fatal marksmanship, or like Eric Harris, who uttered, as he lay dying from a gunshot wound, “My God, I’m losing my breath,” to which one of Tulsa County’s finest responded, “Fuck your breath.” Or you may get tossed into a van and reduced to a bag of broken body parts, like Freddie Gray, whose death ignited a raging tempest in Baltimore. Seemingly surrender and you can still get killed point-blank, as happened to Jerame Reid, who emerged from the passenger side of a car at a traffic stop in New Jersey with his hands raised. Six shots later, he was history.

It’s no great revelation that racism is rife in many police departments, even those in a city renowned for its liberal cosmopolitanism such as San Francisco, where a toxic spill of text messages between policemen (the most flagrant offender shared this handy health tip: “Cross burning lowers blood pressure! I did the test myself!”) led to officer dismissals and the review of thousands of cases. Such slur-slinging is sometimes defended as a combination of gallows humor and fraternal hazing, a Friars Roast on squad-car wheels that expresses camaraderie and releases job pressure, but the torture claims of nearly 200 black men at the hands of a white police commander and detectives in Chicago over the course of decades show that racial slurs emerge from embedded supremacist attitudes.



ADVERTISEMENT



Michigan state-police officers round up suspects during the Detroit riots, July 25, 1967.  
From AFP/Getty Images.

No matter how unabashedly the novels of Joseph Wambaugh and James Ellroy or television series such as *The Shield* and *True Detective* unscrewed the skulls of the armed and dangerous guardians of law and order and gave us a tour of their lusts, greeds, paranoia, prejudices, and borderline-psycho compulsions, it's the *Dragnet* ideal that dominates our political discourse and editorial pieties, a cardboard knighthood of fallen heroes and a few bad apples. But beneath the lip service, in the dirty rooting section of our limbic brains, we've been cultured to identify with the sentinels at the expense of those in the crosshairs, because that's where power, authority, status, and prerogative suit up every day for duty. We may pity the victims, but pity is a watery emotion compared with the blood rush of a good chase and a vigorous takedown. The long-running success of *Cops* derives its voyeuristic fascination from this valorizing of the figure in the foreground, the camera riding sidekick on the night shift and allowing the viewer to share the cops' windshield view of the world, which is often a pretty skanky panorama of sketchy behavior, so many of the perps appearing to opt for the pants-less look. *Cops* spawned a genre of police-perspective procedurals that make up the meat of the programming lineup of cable channels such as CI (Crime & Investigation), with its heavy rotation of *Manhunters: Fugitive Task Force*; *Jacked: Auto Theft Task Force*; and *Dallas SWAT* and its spin-off, *Kansas City SWAT*. Yes, this is a country that treats its urban SWAT teams as if they were *Real Housewives*, though in fairness the SWAT members behave far more admirably between Starship Trooper raids in full battle gear than those table-flipping divas in their gauche finery. Beyond the confines of reality-TV conventions, the picture is much uglier. The Cato Institute features a handy "interactive map of botched SWAT and paramilitary police raids" as a supplement to Radley Balko's book *Overkill: The Rise of Paramilitary Police Raids in America*—raids described as "needlessly subjecting nonviolent drug offenders, bystanders, and wrongly targeted civilians to the terror of having their homes invaded while they're sleeping, usually by teams of heavily armed paramilitary units dressed not as police officers but as soldiers." A reality almost never reflected in Hollywood films, where SWAT units are either anonymous centurions backing up the overpaid hero or fodder for some drug kingpin's or super-villain's booby trap.

This marriage of outlaw-sheriff mystique and a militarized warrior class, where Dirty Harry meets RoboCop, has been a long time bulking and armoring up. In *The Second Civil War*, published in 1968, Garry Wills reported on the preparations for containment and suppression of racial uprisings—ghetto control—to prevent a black militant guerrilla insurgency from turning American cities into *The Battle of Algiers*. It wasn't a work of alarmism. In 1968, Civil War II wasn't some prototype Tea Party/neo-Confederate wet-dream *Nightmare on Elm Street* scenario, but a plausible irruption after Detroit's "12th Street Riot," the year before—which left 43 dead, hundreds injured, and an estimated 1,400 buildings burned—and the nationwide conflagration ignited by the assassination of Martin Luther King Jr. Race relations would improve in the following years and decades, but the domestic arms race, like the international military overstretch, never quite abates. After 9/11, the date from which so much of our hulking entropy can be marked, the War on Terror revived police militarization with a righteous vengeance. State and local law enforcement in communities that didn't have a mouse squeak of a threat risk from sleeper cells could roll out hardware worthy of a Pentagon yard sale. As our twin theaters of operation in Afghanistan and Iraq tapered down, military equipment was re-deployed Stateside, courtesy of the Department of Defense, even such vital peacekeeping machines as the Mine Resistant Ambush Protected vehicle, capable of withstanding bomb blasts. Because, as we all are aware, this country's rotting infrastructure is pimpled with I.E.D.'s. North Little Rock, Arkansas, even retains a couple of armed robots formerly used in Afghanistan, robots being especially attractive acquisitions because they don't put in for overtime or expect pensions.

Much of this hardware has been rolled roughshod over citizens' rights in the War on Drugs, but with the decriminalization of marijuana trending, it will have to be put to other wasteful uses, since adults in authority never want to give up their toys. It will be oiled and ready to quell civil disorder, which we're likely to see more of in chronically poor regions and urban sectors now threatened with resource scarcity due to drought and environmental destruction. Thousands of citizens in Detroit and Baltimore have had their water turned off owing to nonpayment of bills, an excellent way to foster a powder keg. Part of the premonitory hold of *The Walking Dead* is the sense that it may be a preview of coming attractions.

To preserve black lives and the lives of every vulnerable shade, body cams, indictments of officers, and the A.C.L.U. of Missouri's "Mobile Justice" app (for videoing police encounters) are all to the good, as is the social-justice crusade that has mobilized (see Jay Caspian Kang's profile of activist DeRay Mckesson, "Our Demand Is Simple: Stop Killing Us," *The New York Times Magazine*, May 10), but what's also required is a concerted rollback of police-statism and penal-colony proliferation—a genuine libertarian movement, not the mostly frat-bros version we have now. Because what looms behind this country's gunslinger mentality is a prison-gray machine.

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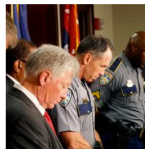


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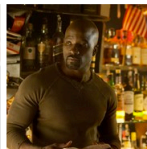
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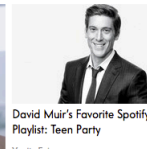
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## OPENED: THE EMOTIONAL ROLLER COASTER WE FACE AS THE MURDERS CONTINUE TO RISE #TERENCECRUTCHER

Posted by Robust on September 21, 2016 at 10:00am

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WELCOME TO  
AFROPUNK  
**SIGN UP**  
OR SIGN IN

OR SIGN IN WITH:



This morning, a former high school classmate of mine (Who is very active in the movement of social injustices) wrote a status on Facebook. The question was: "How are y'all feeling this morning?"

I knew why he was asking. This morning we all woke up to more news of an unarmed black man being killed. His name was Terence Crutcher. He was a loving father, student, brother, and God-fearing man. He didn't deserve to die.

When I clicked on the simple but powerful post by my former classmate these are some of the statements I read:

"Numb."

"Hunted."

"Not Good."

"Sad."

"I just want to go home. I already anticipate accomplishing nothing today. I need time."

"not good man.....im trying to be I swear...but im struggling today."

"Enraged, broken, exhausted, in danger."

"Fragile, tired, anxious."

**By Jasmin Pierre\*, AFROPUNK contributor**

Trauma, in regards to injustices, is very real. I need people to understand that the continued killings are still taking a toll on the mental health of many. We have gotten to the point of not being able to even pull ourselves together over one killing, because another comes soon after. People are tired of this. I'M TIRED of this.

Feeling pain and trauma behind this is very understandable. My words for you today are please take care of yourselves. If you have to log off social media for a few days do it. If you need to avoid the news stations for a little while do it. When your mind isn't feeling right YOU are not feeling right.

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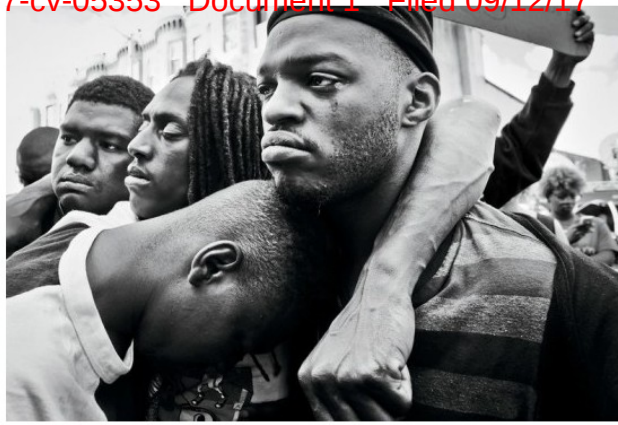


Photo by JAMES WOLCOTT via Vanity Fair

*\*Jasmin Pierre is a 27-year-old mental health activist and author of the new self help book "A Fight Worth Finishing". She is from New Orleans, Louisiana. Jasmin is constantly fighting for the rights of those suffering from major depressive disorder. She inspires to become a life coach and continue writing to encourage others to never give up.*

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"Trauma, in regards to injustices, is very real. I need people to understand that the continued killings are still taking a toll on the mental health of many. We have gotten to the point of not being able to even pull ourselves together over one killing, because another comes soon after. People are tired of this. I'm tired of this." - Jasmin Pierre ([A Fight Worth Finishing](#)).

**OP-ED: The Emotional Roller Coaster We Face As The Murders Continue To Rise #TeranceCrutcher**

This morning a former high school classmate of mine (Who is very active in the movement of social injustices) wrote a status on Facebook. The question was: Ho...  
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